

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DR. HANSEL M. DEBARTOLO,)	
)	
Plaintiff,)	NO. 07 C 6967
v.)	
)	HON. JUDGE KORORAS
)	
)	Magistrate Judge Brown
XO COMMUNICATIONS, INC.)	
HEALTH CARE PLAN,)	
Defendant.)	

FIRST AMENDED COMPLAINT AT LAW

NOW COMES the Plaintiff, Dr. Hansel M. DeBartolo, by and through his attorneys, Hoevel & Associates, P.C., and complains of the Defendant, XO Communications, Inc. Health Care Plan, as follows:

1. Plaintiff is a physician licensed to practice in the State of Illinois and maintains a medical practice at 11 DeBartolo Dr., Sugar Grove, Illinois.
2. Defendant is a self-funded employee benefit plan providing health insurance coverage to its enrollees and their dependants, including an individual named Angela Hart (hereinafter referred to as "Insured").
3. That on or about October 17, 2002 through May 3, 2006 the Plaintiff, at the special instance and request of Insured, provided and delivered to the Insured, professional medical services for the fair and reasonable value and price of \$102,760.00 of which there is a balance due and owing of \$87,808.76.

4. On or about the treatment dates, Insured requested of the Plaintiff that it provide medical services and treatment and to induce Plaintiff to do so, Insured assigned in writing to the Plaintiff all rights and benefits under the aforementioned policy for health insurance benefits. As copy of said assignment is attached as Exhibit A.
5. Defendant acknowledged Insured's assignment of benefits, by forwarding payments to Plaintiff totaling \$14,951.24 for some of the medical services furnished by Plaintiff.
6. The Insured and the Plaintiff at all times complied with the terms and conditions of said health insurance policy herein mentioned.
7. Insured's medical condition treated by the Plaintiff was a loss or damage covered by said policy.
8. Plaintiff has exhausted all administrative remedies.
9. That after repeated oral and written demands for the balance of payment of the policy benefits, the Defendant has failed and refused and still fails and refuses to pay said sum or any part thereof to the Plaintiff.
10. That by denying the policy coverage and policy benefits payable for its insured, Defendant has wrongfully breached said written contract for health insurance.
11. That suit is now brought pursuant to E.R.I.S.A. 29 U.S.C. Section 1132 (a)(1)(B), which provides:

“A civil action may be brought by a participant or beneficiary to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan...”

12. Pursuant to 29 U.S.C. Section 1132(g)(1), Plaintiff may recover reasonable attorneys fees.

WHEREFORE, the Plaintiff, Dr. Hansel M. DeBartolo, demands judgment against the Defendant, XO Communications, Inc. Health Care Plan, for the sum of \$87,808.76, together with the costs of this action, reasonable attorneys' fees and interest as provided by statute.

Respectfully submitted,

s/ Talbot C. Hoevel

Hoevel & Associates, P.C.
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following counsel: lynn_thorpe@gshllp.com.

s/ Talbot C. Hoevel
Talbot C. Hoevel

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EXHIBIT A

DR. H.M. DEBARTOLO, JR., M.D., J.D.

11 DEBARTOLO DRIVE
SUGAR GROVE, IL 60554
(630) 859-1818
FAX: (630) 859-1830

NAME: Angela Hart

DATE: 9/24/03

I assign my medical benefits and rights from:

Aena
(Insurance Company)

To Dr. H.M. DeBartolo Jr., M.D., J.D., for services rendered.

Angela Hart
Signature

I hereby give permission for Dr. H.M. DeBartolo Jr. to receive all of my records from any and all other providers or health care entities.

Angela Hart 9/24/03
Signed Date

I hereby give permission for Dr. H.M. DeBartolo Jr. to file any appeals that are necessary with regard to any denials, insufficient, or non-payments of my medical claims.

Angela Hart 9/24/03
Signed Date